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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

ZACKERY DANIEL HUNT,

Defendant and Appellant.

H038156

(Santa Clara County

Super. Ct. No.C1110221)

Pursuant to a negotiated disposition Zackery Hunt (defendant) pleaded no contest to one count of failing to update his annual sex offender registration (Pen. Code, § 290.012, subd. (a), count two). Defendant admitted that he had one strike prior and three prison priors. (Pen. Code, §§ 667, subds. (b)-(i), 667.5, subd. (b).) In exchange for his no contest plea, defendant was promised a 32 month sentence in state prison, the dismissal of count one (failing to inform law enforcement of his new address, Pen. Code, § 290.013, subd. (a)) and that the court would hear his *Romero* motion and consider striking his prior strike conviction.¹

On March 26, 2012, the court heard and denied defendant's *Romero* motion. The court sentenced defendant to 32 months in state prison consisting of the lower term of 16 months doubled due to the prior strike conviction. The court imposed various fines and

¹ *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

fees and imposed but struck, pursuant to Penal Code section 1385, three one-year terms for the prison priors. The court awarded defendant 484 days of custody credits.

Defendant filed a timely notice of appeal based on the sentence or other matters occurring after the plea.

Defendant's appointed counsel has filed an opening brief in which no issues are raised and asks this court for an independent review of the record as required by *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Counsel has declared that defendant was notified that no issues were being raised by counsel on appeal and that an independent review under *Wende* was being requested.

On July 23, 2012, we notified defendant of his right to submit written argument on his own behalf within 30 days. Defendant has submitted a letter brief from which we glean that he contends that he was unlawfully denied a preliminary hearing, that he was illegally committed because of lack of probable cause, that the trial court exceeded its jurisdiction because he did not have a preliminary hearing, that the court erred in denying his *Romero* motion and the court did not prove that he willfully violated his sex offender registration requirement.

Pursuant to *Wende, supra*, 25 Cal.3d 436, we have reviewed the entire record and have concluded there is no arguable issue on appeal. Pursuant to *People v. Kelly* (2006) 40 Cal.4th 106, we shall provide "a brief description of the facts and procedural history of the case, the crimes of which the defendant was convicted, and the punishment imposed." (*Id.* at p. 110.) In addition, we have described defendant's contentions. We will explain why we have rejected them. (*Id.* at p.113.)

*Facts*²

On May 24, 2011, the San Jose Police Department conducted a routine check of its Megan's law database. Based on this review, the police realized that defendant had not

² Since there was no preliminary hearing in this case, the facts are taken from the probation officer's report.

registered as a sex offender in 2011 on his birthday, which was March 3. Defendant last registered on September 8, 2010.

The police checked the Department of Motor Vehicles database and found that defendant had provided a different address when he registered. The police went to the address listed on defendant's driver's license. The occupant at that address told the police that defendant had been moved out for three months. An arrest warrant was issued on June 30, 2011; defendant was arrested on July 29, 2011.

Proceedings Below

Defendant was charged by felony complaint, filed by the Santa Clara County District Attorney's Office, with one count of failing to inform law enforcement of his new address and failing to register as a sex offender within 5 days of his birthday. The complaint alleged that defendant had suffered a prior strike conviction within the meaning of Penal Code section 667, subdivisions (b)-(i)/1170.12, and that defendant had served three prior prison terms within the meaning of Penal Code section 667.5, subdivision (b).

Arraignment was scheduled for July 29, 2011, but the minute order indicates that defendant was not present. On August 1, 2011, the minute order indicates that defendant was present, represented by counsel, and that defendant waived arraignment. Thereafter, on August 4, 2011, defendant entered a plea of not guilty and the matter was set for a preliminary hearing on a time not waived basis. Subsequently, defendant agreed to a time waiver and the matter was sent to the Early Resolution Calendar (ERC). The matter continued on the ERC through the remainder of August and September until October 14, 2011, when defendant pulled his time waiver. On October 27, 2011, in writing, defendant waived his right to a preliminary hearing. On November 3, 2011, the district attorney filed an information charging defendant with the same two counts.

On November 7, 2011, defendant entered not guilty pleas and denied the allegations in the information concerning strike priors and prison priors. The matter

continued on the Master Trial Calendar through November and December during which time defendant brought a *Faretta* motion³ and the matter was taken off calendar. A notation on the December 28, 2011 minute order indicates that defendant was "thinking about offer." Finally, the case resolved on January 1, 2012, when defendant accepted the plea bargain, entered his plea and admitted the allegations in the information.

Before entering his plea, defendant was advised of and waived his constitutional rights to a jury trial, to present a defense, to confront witnesses and his right against self-incrimination. Further, he was advised of the consequences of his plea, including immigration consequences, the maximum possible sentence in his case and the effect of his prior strike conviction.

At the hearing on defendant's *Romero* motion, the court looked at three factors: the present offense, defendant's strike offense and defendant's background character and prospects. The court found that defendant was approximately three months out of compliance with his obligation to register; that the strike offense involved assaulting a 12-year-old girl for which defendant was sentenced to seven years in prison;⁴ and the probation officer had noted that defendant was "unreliable and manipulative," had minimized his drug use, and had 10 parole violations. Based on these factors, the court denied defendant's request to strike his prior conviction.

Defendant's Contentions

As can be seen, all of defendant's contentions relate to matters that he alleges occurred before entry of his plea. There are at least three problems with defendant's contentions. First, to raise issues other than the sentence imposed or matters occurring after the plea, defendant is required to seek and be granted a certificate of probable cause.

³ *Faretta v. California* (1975) 422 U.S. 806.

⁴ The probation officer's report indicates that defendant digitally penetrated a 12-year-old female friend and placed his penis in her vagina.

(Pen. Code, § 1237.5.)⁵ Second, as to defendant's claim that he was denied a preliminary hearing, the record shows that defendant waived his right to a preliminary hearing. Third, as to defendant's claim that the court acted outside its jurisdiction because he was committed without probable cause, and that the court did not prove that he willfully violated his sex offender registration requirement, defendant is in effect challenging the validity of his plea. Defendant has failed to obtain a certificate of probable cause and therefore cannot challenge the underlying validity of his plea. (*People v. Panizzon* (1996) 13 Cal.4th 68, 77–79.)

As to defendant's contention that the court erred in denying his *Romero* motion, the refusal to grant defendant's *Romero* motion was consistent with applicable law, supported by substantial evidence, and well within the discretion of the trial court.

Upon our independent review of the record we conclude there are no meritorious issues to be argued, or that require further briefing on appeal. The sentence imposed was consistent with the plea bargain. The restitution fine and fees and assessments imposed were supported by the law and facts. At all times appellant was represented by competent counsel.

Disposition

The judgment is affirmed.

⁵ "No appeal shall be taken by the defendant from a judgment of conviction upon a plea of guilty or nolo contendere, or a revocation of probation following an admission of violation, except where both of the following are met: [¶] (a) The defendant has filed with the trial court a written statement, executed under oath or penalty of perjury showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings. [¶] (b) The trial court has executed and filed a certificate of probable cause for such appeal with the clerk of the court."

ELIA, J.

WE CONCUR:

RUSHING, P. J.

PREMO, J.